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September 6, 2005

Ms. Barbara Robeson, Chair and members
of the Charter Review Commission
4444 Rice Street Suite 235
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Dear Commission members:

At the August 3, 2005 meeting of the Commission I was asked to provide information about the Ohana Kauai experience relating to the provisions of the Kauai County Charter in seeking to place the proposed charter amendment on the ballot for the November 2004 general election. There were several matters that were troubling to the Ohana Kauai group about the process and I believe they are worthy of public attention.

Article XXIV of the Charter provides in Section 24.01B for the initiation of a charter amendment "By petition presented to the council, signed by not less than five percent (5%) of the voters registered in the last general election, setting forth the proposed amendments. Such petitions shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments which may be made by the county attorney. Upon filing of such petition with the council, the county clerk shall examine it to see whether it contains a sufficient number of apparently genuine signatures of voters". Within these words lurks a variety of ambiguities and inconsistencies and the County has claimed that requirements exist that are unstated.

Before commencing any solicitation for signatures Ohana representatives met in 2003 with the County Clerk. We were advised that the petition should contain the amendment being proposed, the names of the "committee" of signers, and the space for signatures should include the name of the signer printed and also signed, the address of the signer using street address (registration records are kept that way), the date of signing, the social security number of the signer, and the signers date of birth. We were told that this would aid the Clerk in validating the signature being of a registered voter, but none of the signer information requirements are expressed in Article XXIV.

We were told that the Clerk considered that the 5% requirement established the number of signatures required, but the validity of the signatures would depend on whether the signer was registered at the time of examination by the Clerk. Thus, for example a person registered to vote at the time of the 2002 General election and at the time of signing the petition, but not registered at the time the signatures were examined would not be validated.

The persons seeking voter signatures were instructed by us to inquire whether the person solicited was a registered voter and not to attempt to obtain a signature from any

person who did not acknowledge registration. Despite this precaution and the use of voter registration lists, the Clerk advised that over one-third of the submissions by the Ohana group were not acceptable. While we believe that the number of rejections was improperly inflated, we had filed many more signatures than were required and when the Clerk certified that sufficient signatures had been obtained, we did not further pursue our concern about the signatures invalidated. But our doubts about the integrity of the process remained.

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Section 22.05 of the Charter contains provisions applicable to petitions under Article XXII. We were told after the fact that at least some of these provisions were being applied by the Clerk to petitions for Charter amendments under Article XXIV. For example, in Sec. 22.05 it is provided that a signer may withdraw his signature. No such provision is stated in Article XXIV. We do not believe that the requirements for petitions applicable to Article XXII should be applied for petitions under Article XXIV.

The above quoted language of Section 24.01 includes inconclusive language about the function of the county attorney. After we had received certification from the County Clerk as to the sufficiency of the number of signatures on the Ohana petitions, we inquired of the County Attorney as to any action she might request. We were directed to present the text of the ballot question to be used (which we did) and then the County Attorney wrote the Clerk attaching our ballot question text and stating gratuitously that the County Attorney offered no opinion as to the validity of the measure. If the County Attorney then had the opinion that the proposed Charter amendment violated the County Charter and the state Constitution that she alleged in the lawsuit Complaint she filed less than two months later, she should have promptly tried to prevent the issue from being submitted to the voters for decision.

A number of amendments might be considered concerning the provisions for voters petitions in Article XXIV and we would be willing to offer our suggestions for such amendments if requested.

Very truly yours,

Walter S. Lewis